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BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

RATE ADJUSTMENT DUE TO EXTRAORDINARY OR EXCEPTIONAL CIRCUMSTANCES	)))	Docket No. R2013-11

COMMENTS OF
MPA—THE ASSOCIATION OF MAGAZINE MEDIA
AND ALLIANCE OF NONPROFIT MAILERS
ON NOTICE OF INQUIRY ISSUED NOVEMBER 5, 2014
(November 19, 2014)

The undersigned parties respectfully submit these comments on the Notice of Inquiry on Proposed Methodology to Calculate Adjustment to Surcharge Cap for Forever Stamps (PIHOP Adjustment) (“NOI”) issued by the Commission on November 5 in this docket. In its NOI, the Commission proposes to estimate the surcharge revenue gained by the Postal Service during the exigent surcharge period by replacing Single-Piece Letter stamp volumes in billing determinants with the volume of Forever Stamps sold during the exigent surcharge period.

The Commission should reject this approach, for it could significantly understate exigent surcharge revenue. As the Commission acknowledges,

> substituting Forever stamp sales for all stamped First-Class single-piece letter volume in the surcharge calculation understates the surcharge collected from First-Class single-piece letters because not all stamped First-Class single-piece letters were sent with a Forever stamp. The Quarterly Statistics Report identifies stamped mail by category. In Quarter 3 of FY 2014, approximately 83 percent of stamp sales were Forever Stamp Sales, therefore the difference between stamped mail and mail pieces bearing a Forever stamp is significant.

NOI at 3-4. An adjustment for postage in the hands of the public ("PIHOP") that results in an understatement of surcharge revenue would violate 39 U.S.C. § 3622(d)(1)(E) by allowing the Postal Service to gain more revenue than allowed by that section.

The Commission asserts that this defect could be "somewhat" offset by another error in the proposed methodology:

> Forever stamps are used not only for mailing First-Class single-piece letters but also for mailing flats and parcels in First-Class and Package Services. By not adjusting the billing determinants for those categories, the amount of surcharge revenue collected may be overstated.

Id. at 4. The notion that the second error would come close to offsetting the first, however, is sheer speculation. Nothing in the record suggests that the volume of PIHOP stamps used to mail "flats and parcels in First-Class and Package Services" is nontrivial, let alone sufficient to offset the admittedly "significant" difference between (1) the total volume of stamped mail and (2) the subset of stamped mail with a Forever stamp.

Nor may the proposed approach be justified on the theory that "the Commission does not have a superior methodology to offer." NOI at 4. At least two better approaches are available.

The first is the approach identified and then discarded by the Commission earlier in the NOI:

> A straightforward solution would be to calculate the surcharge collected from Forever stamps by quarter by multiplying the quarterly volume of Forever stamps sold while the surcharge was in effect (calculated by total quarterly Forever stamp revenue divided by 49 cents) by 2 cents and subtracting the quarterly volume of Forever stamps from the quarterly

> billing determinants volumes used to calculate the amount of surcharge collected. This solution avoids double counting the surcharge collected from mail pieces that were sent with Forever stamps.

NOI at 3. The NOI rejects this approach on the theory that "it is not feasible to use because data on Forever stamp usage *by mail category* are not available" (emphasis added). This objection is unfounded.

The Postal Service clearly possesses data on *total* Forever Stamp usage; otherwise the Postal Service could not have estimated the Forever Stamp PIHOP balance, which the Postal Service provided in spreadsheet POIR.13.Q.1.PIHOP.xls accompanying its response to POIR No. 13. Moreover, the Commission can estimate the quarterly volume of Forever stamps used *by mail category* by making the simplifying assumption that all Forever Stamps were used to pay the First-Class Mail Single-Piece Letters first-ounce rate. This is the same approach that the Postal Service itself used in developing its PIHOP adjustment. *See* USPS Response to POIR No. 13, Questions 1b and the accompanying spreadsheet POIR.13.Q.1.PIHOP.xls.

Under this approach, the Commission would adjust exigent surcharge revenue estimated from billing determinants using the following formula:[1]

Adjustment = ($0.02 / $0.49) x Forever Stamp Sales
– ($0.02 / $0.49) x Revenue From Forever Stamps Used

[1] Like in the PIHOP adjustment and the USPS response to POIR No. 15, sales from stamped envelopes, stamped cards, and global forever stamps can be excluded from the figures. If revenue for Forever Stamps used is recognized based upon the price of the stamp when purchased (as opposed to its value when used), the weighted average price of the stamps when purchased should be substituted for $0.49 in the latter part of this equation. Again, USPS must possess this information; it is necessary to develop the Forever Stamps PIHOP information provided in POIR.13.Q1.PIHOP.xls.

No party in this proceeding has criticized the Postal Service's simplifying assumption that all Forever Stamps will be used to mail Single-Piece Letters. Moreover, such a criticism would be unwarranted.

First, the ultimate purpose of estimating quarterly exigent surcharge revenue in this proceeding is to ensure that the Postal Service does not generate in excess of $3.2 billion in exigent surcharge revenue across *all market-dominant products*. The amount of the exigent surcharge revenue generated by mail category is irrelevant to this ultimate purpose.

Second, because the exigent surcharge is virtually uniform across the board, the mail category for which Forever Stamps are used has minimal effect on estimated Forever Stamp exigent surcharge revenue. For example, if two Forever stamps are used to pay the First-Ounce rate for a Single-Piece Flat, exigent surcharge revenue for that piece equals four cents (98 cents minus 94 cents). This translates into two cents per Forever stamp, the same as if each stamp had been used to mail a Single-Piece letter.

Third, the vast majority of all stamps (*i.e*., Forever stamps plus traditional stamps bearing stated denominations) indisputably are used to mail Single-Piece letters. For example, according to the FY 2014, Quarter 3 Quarterly Statistics Report (Table 3-A), Single-Piece Letter stamp revenue comprised 90 percent of total First-Class Mail stamp revenue and 82 percent of total stamp revenue. Given that Forever Stamps are valued at the one-ounce Single-Piece Stamped Letter rate,[2] Single-Piece Letter Forever Stamp revenue is almost certainly a higher percentage of total Forever Stamp revenue.

For these reasons, the undersigned parties believe that the Commission should adopt the methodology advocated immediately above. If, however, the Commission nonetheless concludes for some reason that the methodology cannot be adopted, the appropriate course is to submit additional information requests[3] to the USPS to determine the full extent of its information on Forever Stamp sales and usage and, based on this information, craft a reasonable alternative. The Commission should not simply adopt the flawed methodology proposed in the NOI.

The underlying issue confronting the Commission here is a recurring feature of public utility and common carrier regulation: the regulated firm often has sole possession of critical information on its volume, revenue and costs. To overcome this information asymmetry, Congress has given the Commission tools for compelling the Postal Service to produce the data needed by the Commission to discharge its regulatory responsibilities. Among those tools is the power to issue information requests during rate cases. Failing to make full use of this power, and then using the resulting gaps in the record as a justification for adopting a revenue adjustment that almost certainly would bestow an unlawful windfall on the Postal Service, is not a proper approach. As the Court of Appeals made clear less than two years ago, the

[2] "The value of the Forever Stamp is the domestic First-Class Mail letter price in effect on the day of use." https://about.usps.com/news/fact-sheets/forever-stamp-facts.htm.

[3] The Commission did not ask most of the questions proposed by MPA and ANM in their September 2 and October 2 motions for information requests.

Commission may not adopt an incomplete remedy for a violation of a statutory pricing standard without a credible showing that no better and more complete remedy could have been developed. *GameFly, Inc. v. Postal Regulatory Commission*, 704 F.3d 145, 149 (D.C. Cir. 2013).

Respectfully submitted,

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